

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-64

In the Matter of

Policies and Rules Concerning
Changing Long Distance Carriers

REPORT AND ORDER

Adopted: December 12, 1991; Released: January 9, 1992

By the Commission:

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I. INTRODUCTION

1. On March 25, 1991, this Commission released a Notice of Proposed Rulemaking¹ to consider revising primary interexchange carrier (PIC) change rules for interstate long distance service. We now adopt modifications of the proposals in the *PIC Change NPRM*. Specifically, we now require interexchange carriers (IXCs) that submit PIC change orders on behalf of customers to local exchange carriers (LECs) to institute one of four confirmation procedures before submitting orders to the LECs. We believe that these revisions to our PIC change procedures will provide additional protection to consumers from unauthorized switching of their long distance carriers beyond existing safeguards and without unreasonably burdening competition in the interexchange market.

II. BACKGROUND

2. The Commission, in its *Allocation Order* and its subsequent *Waiver Order* and *Reconsideration Order*,² set forth rules and procedures for implementing equal access and presubscription to an IXC. The original allocation plan adopted by the Commission required IXCs to have a letter of agency (LOA) signed by the customer on file before submitting a PIC change order to the LEC on behalf of the customer. *Allocation Order*, Appendix B, 101 FCC 2d at 929. After vigorous objections from IXCs, including American Telephone & Telegraph Company (AT&T), that this requirement would stifle competition, we modified the requirement to allow IXCs to place PIC changes if they had "instituted steps to obtain signed LOAs." *Waiver Order*, 101 FCC 2d at 942. In the subsequent *Illinois CUB Order*,³ we denied a petition filed by the Illinois Citizens Utility Board to revise the Commission's carrier selection rules, finding that the rules were intended to "facilitate the IXCs' marketing efforts while maintaining the protection embodied in the letter of agency requirement."⁴

3. Despite the adoption of the consumer protection mechanisms set forth in the *Illinois CUB Order*, the Commission continued to receive complaints that some customers had been switched to other carriers without the

¹ American Telephone and Telegraph Company, Petition for Rulemaking, CC Docket No. 91-64, Notice of Proposed Rulemaking, 6 FCC Rcd 1689 (1991) (*PIC Change NPRM*).

² Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase 1, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC

Docket No. 83-1145, Phase, 1, 101 FCC 2d 935 (1985) (*Waiver Order*).

³ See Illinois Citizens Utility Board Petition for Rulemaking, Memorandum Opinion and Order, 2 FCC Rcd 1726 (Com.Car.Bur. 1987) (*Illinois CUB Order*).

⁴ See *Illinois CUB Order* at 1729.

customers' permission. On January 10, 1990, AT&T filed a petition requesting revision of the Commission's carrier selection rules.⁵ It proposed returning to the Commission's original rules, allowing an IXC to submit PIC change orders to a LEC on a customer's behalf only when the IXC has an LOA for that customer on file. AT&T alleged that there had been an increase in unauthorized switching of customers during 1989, causing inconvenience for customers and creating expense for LECs who must resolve the resultant disputes. AT&T Petition at 7. Comments and replies were filed in March 1990.

4. On December 11, 1990, AT&T and MCI informed the Commission that they had reached an out-of-court settlement of their related civil suits against each other. They agreed, as part of their settlement, to propose to the Commission certain safeguards designed to protect customers against being switched without permission (the AT&T-MCI proposal):⁶ (1) a choice of three verification procedures to be instituted by IXCs before placing PIC change orders generated by telemarketing with LECs on behalf of customers: (a) obtaining an LOA from the customer; (b) obtaining the customer's authorization by use of an 800 number; and (c) obtaining the customer's authorization by use of an independent third party verifier; (2) a monthly audit of PIC change orders generated by telemarketing and placed by IXCs on behalf of customers; and (3) a Quality Assurance Program to monitor IXCs' telemarketing practices for use of blatantly false and misleading claims. We also received an alternative proposal from NARUC and others: (1) within three business days of the customer's request for a PIC change, the IXC must send each new customer an information package containing at least the names of the customer's current IXC and the new IXC, a description of any terms, conditions, or charges incurred, the name of the person ordering the change, the name, address, and telephone number of both the customer and the new IXC, and a postpaid postcard which the customer can use to deny, cancel, or confirm a service order; and (2) the IXC must wait 14 days after the information package is mailed to customers before submitting their PIC change orders to LECs.

5. We tentatively concluded in the *PIC Change NPRM* that a modification of carrier selection procedures is necessary to protect the interests of consumers. We also concluded that the safeguards presented in the AT&T-MCI proposal would be more effective and less burdensome than the amendment to the carrier selection rules originally requested by AT&T in its January 10, 1990 petition for rulemaking. Therefore, we sought comment on our tentative conclusion that these revised procedures would serve to diminish substantially the problem of unauthorized switching while continuing to encourage carriers to compete for customers' business. In addition, we invited comment regarding alternative procedures to discourage unauthorized switching, particularly alternatives suggested in comments filed in response to AT&T's petition.

III. SUMMARY OF DECISION

6. We have reviewed the AT&T-MCI proposal, an alternative proposal submitted by NARUC, the comments and the reply comments filed in response to the *PIC Change NPRM*, and all *ex parte* presentations. In this decision, we affirm our tentative conclusion that a modification of the carrier selection procedures is necessary to protect the interests of consumers. We also affirm our tentative conclusion that the verification procedures proposed by AT&T and MCI in their settlement agreement will be more effective and less burdensome than the LOA requirement originally requested by AT&T in its petition for rulemaking. Finally, we conclude as well that the safeguards suggested in the NARUC proposal should be added to the AT&T-MCI proposed procedures as an additional verification option.

IV. COMMENTS

A. Consumer Protection Under the AT&T-MCI Proposal

7. Parties who commented disagree about whether the procedures set out in the AT&T-MCI proposal would be adequate to protect consumers from unauthorized switching. AT&T, Eastern Telephone Systems (Eastern), and Bell Atlantic maintain that requiring IXCs to obtain some form of independent, unambiguous evidence of customer authorization *before* changing customers' PIC designations has the potential to eliminate most disputes between IXCs and their customers.⁷ New York State Department of Public Service (NYSDPS) urges adoption of the AT&T-MCI proposal so that IXCs which are not parties to the agreement will also be obligated to abide by it.⁸ Metromedia Communications Corporation (Metromedia), however, argues that any rules adopted by the Commission should be targeted at eliminating unauthorized switching of IXC service which results from fraud or negligence.⁹ It contends that the threat of litigation may be a more effective deterrent to unauthorized switching than any rules which the Commission might devise.¹⁰

8. Although US Sprint (Sprint) argues that the requirements for mandatory disclosures [suggested in the proposals by AT&T-MCI and by NARUC and others in the *PIC Change NPRM*] should apply only to outbound telemarketing efforts of IXCs,¹¹ Representative Bob Wise, West Virginia (Rep. Wise) contends that the disclosures to a prospective customer should also apply to mail and in-person solicitations as well.¹² Allnet Communication Services, Inc. (Allnet) would have the Commission pre-

⁵ AT&T simultaneously filed suit against MCI Telecommunications Corporation (MCI) in Federal District Court in New Jersey, alleging unfair telemarketing practices and unauthorized switching. MCI had previously filed suit against AT&T on October 10, 1989, alleging deceptive advertising practices.

⁶ See Letter from James L. Lewis, MCI Telecommunications Corporation, to Secretary, Federal Communications Commission, December 12, 1990 (MCI Letter).

⁷ AT&T Comments at 4. See also Eastern Comments at 3; Bell Atlantic Comments at 1.

⁸ NYSDPS comments at 1.

⁹ Metromedia Reply at 1-5.

¹⁰ Metromedia Comments at 6-7. See also Allnet Comments at 11-12.

¹¹ Sprint Comments at 2-3.

¹² Rep. Wise Comments at 2. See also PRTC Comments at 2.

scribe the wording of the preamble of the disclosures for every telemarketed *new* sales call to prevent divergence in interpretation of the Commission's requirements.¹³

9. Convergent Communications, Inc. (Convergent) comments that although the proposed AT&T-MCI script is adequate for verification, IXCs should be allowed to provide additional information.¹⁴ Allnet, however, claims that the proposed verification script contains leading questions and penalizes the customer for giving the "wrong" answer by returning the customer to the IXC's salesperson.¹⁵

10. Public Utilities Commission of Ohio (PUCO) suggests that IXCs be required to file reports on customer complaints to the FCC, and that, if an IXC is repeatedly involved in unauthorized switching, it should be allowed to switch customers to its network *only* upon written authorization by the potential customers.¹⁶ Sprint counters that it would be expensive and time-consuming for IXCs to construct the data gathering and reporting systems needed to furnish the Commission with the information suggested by PUCO, and that the complaints filed with the Commission provide it with adequate data on trends in the volume of complaints.¹⁷

11. Bell Atlantic maintains that IXCs that employ either electronic or third party verification should be required to retain records of those verifications and to provide them to local exchange carriers (LECs) when customers dispute PIC changes. It suggests that these records should, at a minimum, contain the same information as an LOA and should be in a form agreed to by the LEC.¹⁸ Sprint argues, however, that IXCs should only be required to retain all records and data for a six-month period after submission of the PIC change order, except in instances of initial conversion of an end office to equal access, for which a nine-month retention period would be more appropriate.¹⁹

B. Adoption of All or Part of the AT&T-MCI Proposal

12. In general, commenting parties suggest some variation in the proposal. Bell Atlantic avers that PIC changes should be initiated only by end users, IXCs, and agents designated by IXCs to initiate PIC changes on behalf of the IXCs.²⁰ MCI comments that once an IXC certifies to the LEC that it has instituted the AT&T-MCI proposal procedures, the LEC should be required to honor all PIC change requests submitted by that IXC.²¹ Rep. Wise notes that because confirmation of customers' desire to switch carriers is more effectively made after a period of time has elapsed, a 24-hour waiting period should be instituted between the sale and verification of the change order.²²

13. America's Carriers Telecommunications Association (ACTA) argues that each IXC should be allowed to select any verification procedure that meets its needs and those

of its customers, even if that procedure is not one of the alternatives suggested in the *PIC Change NPRM*.²³ *Ameritech Operating Companies (Ameritech)* is concerned, however, that permitting different and potentially numerous verification procedures would result in increased LEC costs and time to resolve billing disputes.²⁴ *BellSouth* would not oppose electronic verification or third-party verification, provided the rule clarifies the circumstances in which IXCs can employ such methods and the criteria LECs should use to determine the efficacy of such verification.²⁵

14. Allnet objects that it is both inefficient and unreasonable to require IXCs to submit certification information to the more than 1400 LECs; it would have the Commission serve as a central clearing house for all self- or third-party compliance certification submissions.²⁶ AT&T would also have the Commission monitor closely, by means of reports from LECs and IXCs, the rate of unauthorized switching of IXC service after the procedures are implemented and, if it appears necessary, promptly revisit this matter.²⁷

(1) AT&T-MCI Verification Procedures

(a) Written Authorization

15. Commenting parties differ regarding the effectiveness of the LOA. Michigan Public Service Commission Staff (MPSCS) asserts that an LOA signed by the customer is the preferred method of verification because it is simple, can be easily documented, and clearly conveys the intent of the customer.²⁸ AT&T argues that because verbal authorizations have not yet been proved reliable, written authorization should be the only evidence sufficient to relieve IXCs of liability for LEC charges for restoring improperly switched customers to their original PICs. General Communication, Inc. (GCI) contends that a requirement for LOAs favors the dominant carrier and is thus anticompetitive.²⁹ Moreover, argues Communique Telecommunications, Inc. (CTI), signed LOAs are not sufficient to confirm customer orders to switch carriers when customers deny placing orders.³⁰

16. Bell Atlantic maintains that the Commission should prescribe the form and the content of a valid LOA, which should be a separate signed document whose only purpose is to authorize an IXC to initiate a PIC change. For example, says Bell Atlantic, the Commission should prohibit the practice of some IXCs who use a customer's endorsement on the back of a promotional check as authorization for a PIC change.³¹ Conversely, MCI argues that IXCs should be permitted to use check payments to induce customers to change their PIC, and that because the LOA language or equivalent appears on the check

¹³ Allnet Comments at 11 n.11.

¹⁴ Convergent Comments at 8-9. *See also* Sprint Comments at 7.

¹⁵ Allnet Comments at 5-6.

¹⁶ PUCO Comments at 3.

¹⁷ Sprint Reply at 6.

¹⁸ Bell Atlantic Comments at 2. *See also* SWB Comments at 2.

¹⁹ Sprint Comments at 7-8.

²⁰ Bell Atlantic Comments at 5-6 and Reply at 4. *See also* IRA Comments at 7-9; CBT Reply at 3; USTA Comments at 2.

²¹ MCI Comments at 3-4.

²² Rep. Wise Comments at 2.

²³ ACTA Comments at 2-7. *See also* USTA Comments at 2-3; CTI Comments at 2.

²⁴ Ameritech Reply at 4.

²⁵ BellSouth Reply at 1-2. *See also* PRTC Comments at 1-2.

²⁶ Allnet Comments at 10-11.

²⁷ AT&T Comments at 8.

²⁸ MPSCS Comments at 3.

²⁹ GCI Comments at 2-3. *See also* Convergent Comments at 6, Sprint Comments at 4.

³⁰ CTI Comments at 4.

³¹ Bell Atlantic Comments at 6. *See also* USTA Reply at 3-4.

which the consumer must endorse to receive the promotional offer, the consumer is aware that he or she is authorizing a PIC change in cashing the check.³²

(b) Customer-dialed 800 Number

17. No party, other than AT&T and MCI who submitted this proposal, offered arguments in support of a customer-dialed 800 number. Such a system is expensive, asserts Sprint, and does not lend itself to good customer relations with newly-won customers.³³ Eastern is skeptical about this procedure, particularly because there is no human "voice" confirming the sale, and because the originating automatic number identification (ANI) is automatically recorded.³⁴ In addition, notes GCI, customers must have touch tone service in order to use answer verification queries once the 800 number is dialed.³⁵ Convergent argues that smaller IXC's and resellers may not have the traffic volumes necessary to sustain such facilities, and use of these facilities may not be the most efficient or economical way for them to conduct their operations.³⁶

(c) Independent Third Party v. In-house Verification

18. Convergent argues that third party verification is clearly tailored to large carriers with substantial resources and volume.³⁷ GCI asserts that the use of an unaffiliated verification agency interferes with the customer-carrier relationship by creating a climate in which consumers will be led to believe that the IXC carrier industry, as a whole, is unreliable or worse.³⁸

19. Sprint contends that IXC's should have the flexibility either to hire an independent third party or to perform the verifications "in-house" by salaried employees who earn no commissions based on telemarketing sales. It asserts that in-house personnel would be better able to answer any questions the customer may raise during the course of the call about the long distance services provided by the carrier, and, because they would have to live with the problems created by confused or misled customers, may be more likely to do a more thorough job of verification. Moreover, notes Sprint, use of independent third party verifiers would be more expensive than using in-house personnel because a third party verification firm would treat this activity as a profit center.³⁹ AT&T asserts that permitting IXC's to use their own employees to perform "independent confirmations" would undermine the crucial purpose of the rule: to create *independent*, unambiguous evidence of customer choice and to eliminate or reduce the abuses caused by overzealous carrier marketing activities. Furthermore, AT&T maintains that the record contains no evidence or basis to assume that the competitive telemarketing industry will be unable to provide the required services at reasonable cost.⁴⁰

20. Several other parties support on-line verification enhanced by recording the call. For example, CTI maintains that recording the sales call when the consumer

makes his or her "buy" decision makes it difficult for a customer to deny placing the order. It therefore suggests that the Commission allow the recording of telephone solicitations without a "beep tone" warning to prevent fraud against long distance companies as well as unauthorized switching of IXC service.⁴¹

(2) Auditing Procedures; Quality Assurance Program (QAP)

21. There is little support among commenting parties for the broad application of the proposed auditing procedures or the Quality Assurance Program. Sprint recommends that, to avoid burdening smaller carriers or carriers making lesser use of outbound telemarketing, the frequency of audits should vary with the volume of outbound telemarketing calls.⁴² Allnet protests that the audit requirements are "attestation audits" which, because they require the IXC to report its violations to the Commission, are of questionable value.⁴³ Metromedia argues that implementation of an independent audit procedure is not affordable for smaller IXC's.⁴⁴

22. Allnet asserts that the QAP requires "self-attestation" reports which are of questionable value. Secondly, Allnet asserts that it is unclear how violations of the prohibition on "blatant falsehoods" would be monitored and the prohibitions actually enforced. Thirdly, Allnet notes that the QAP appears to be limited to telemarketing applications, although blatant falsehoods are also improper in other sales situations. Finally, maintains Allnet, the AT&T-MCI proposal contains no penalties for having violated the QAP.⁴⁵

23. Convergent suggests that the QAP should not apply to IXC's making less than 1,000,000 outgoing telemarketing calls per year or to non-facilities-based resellers. It argues that if the QAP is required for small or non-facilities-based resellers, the Commission should allow the QAP to be performed "in house" by responsible executives.⁴⁶

24. ACTA asserts that, in documented instances of trade disparagement and misrepresentation, the Commission should take action against offending carriers. ACTA suggests, for example, that the Commission require an offending competitor to provide a written clarification to the customers of an IXC "victimized" by such a competitor's use and reliance on erroneous information or representations.⁴⁷ Puerto Rico Telephone Company (PRTC) believes that imposing the QAP will enable LEC's and the Commission to identify and inform the public about the most abusive carrier marketing practices.⁴⁸ AT&T states that although industry-wide institution of QAP's is desirable, it is not as critical as stringent enforcement of the

³² MCI Reply at 3.

³³ Sprint Comments at 4. See also Metromedia Reply at 8-9.

³⁴ Eastern Comments at 5-6.

³⁵ GCI Comments at 3.

³⁶ Convergent Comments at 6.

³⁷ Convergent Comments at 6.

³⁸ GCI Comments at 2-3.

³⁹ Sprint Comments at 4-6.

⁴⁰ AT&T Reply at 6-7.

⁴¹ CTI Comments at 4-7. See also ACTA Comments at 3; Metromedia Reply at 19; Convergent Comments at 8-9.

⁴² Sprint Comments at 8-9. See also CompTel Comments at 4.

⁴³ Allnet Comments at 6-7.

⁴⁴ Metromedia Reply at 7-8.

⁴⁵ Allnet Comments at 6-8. See also Sprint Comments at 9-10.

⁴⁶ Convergent Comments at 4-9.

⁴⁷ ACTA Comments at 8-9. See also Rep. Wise Comments at 2.

⁴⁸ PRTC Comments at 3.

order confirmation procedures and Commission monitoring of the amount of unauthorized switching that persists after those procedures are in place.⁴⁹

C. Unauthorized PIC Change Charges

25. Sprint maintains that the current requirement that the IXC pay all change charges associated with disputed changes for which the IXC is unable to produce an LOA should remain unchanged. Sprint argues that an LOA would still provide the LEC with the most reliable guidepost in determining who should bear the PIC change charges in a disputed case.⁵⁰ Convergent would, however, allow recorded oral proof in addition to written proof of authorization.⁵¹

26. Bell Atlantic argues that any final rules should not disturb its charges for changing the initial unauthorized switching of IXC service nor its separate tariffs for an "unauthorized change charge" to cover the costs of investigating the dispute and returning the customer to its carrier of choice.⁵² It also suggests that the Commission could reduce disputes over the authenticity of third party and electronic verification by defining the "customer" who must verify PIC changes as the billed party or a spouse -- not any adult resident of the household, as the *PIC Change NPRM* suggests.⁵³ At a minimum, states Bell Atlantic, the person verifying the PIC change should be asked if he or she has authority to select an IXC.⁵⁴

27. PUCO suggests as an additional requirement that IXCs who switch customers without authorization should be required to make refunds that include the LEC charge for a carrier switch as well as any incremental charges, calculated on a call-by-call basis, that are incurred by the customer as a result of rates higher than the original carrier's rates.⁵⁵ Sprint protests that the administrative costs of such a requirement would far outweigh its benefits.⁵⁶

28. CompTel observes that, with the adoption of new rules designed to minimize IXC errors in authorizing changes, holding IXCs strictly liable for unauthorized PIC changes may no longer be justified.⁵⁷ MCI argues that IXCs should not be required to pay the charges for disputed PIC changes imposed by some LECs if IXCs show that they followed one of the approved verification methods. In effect, says MCI, there would arise an

unrebuttable presumption that any mistake or error was not that of the IXC.⁵⁸ Bell Atlantic disagrees, contending that because disputes over authorization, caused by IXCs' marketing programs, are still likely to arise, IXCs should bear the resulting costs. It notes that IXCs are not now "strictly liable" for charges for unauthorized switching of service, but are liable only if they fail to produce a valid LOA.⁵⁹

29. Finally, NTCA suggests that a charge that penalizes IXCs using marketing techniques that result in unauthorized switching will be the most effective method of reducing unscrupulous sales practices.⁶⁰ AT&T counters that even if "punitive" charges were justified and could be effective, there is no basis for permitting LECs to impose the charges.⁶¹

D. Application of Procedures to Customer-owned Payphones

30. MCI contends that applying the AT&T-MCI proposal to payphone customers would not justify the additional costs and is unnecessary because commercial customers are more sophisticated buyers of telecommunications services.⁶² Because disputes between the end user and the IXC concerning PIC changes place the LECs in the position of mediating between the two parties, SWB and NYNEX support applying the proposed requirements to *all* carriers and payphone providers.⁶³ Bell Atlantic, Ameritech, and MPSCS argue that the Commission should impose a more stringent requirement for payphones, *viz.* that IXCs be required to have a signed LOA prior to submitting the PIC change order.⁶⁴

E. Alternatives Proposed by NARUC and Other Parties

31. We invited comment regarding whether the various alternatives proposed by NARUC and other parties would be preferable to the AT&T-MCI proposal. In particular, we sought comment on the following procedures: (1) the required mailing of an information packet to customers agreeing to change service within 3 days of the IXC telemarketing call; and (2) a 14-day waiting period before IXCs submit PIC change orders to LECs.

32. NARUC asserts that its proposal⁶⁵ would only slightly modify the current Rules by standardizing what is required of IXCs that submit PIC change orders to LECs

⁴⁹ AT&T Reply at 7 n. *.

⁵⁰ Sprint Comments at 6-7. *See also* CBT Reply at 2; Rep. Wise Comments at 2; SWB Comments at 1-2; SWB Reply at 4-5; AT&T Comments at 7-8; NECA Comments at 3-6; GCI Comments at 4.

⁵¹ Convergent Comments at 9.

⁵² Bell Atlantic Comments at 3. *See also* BellSouth Reply at 2, USTA Comments at 2.

⁵³ *PIC Selection NPRM*, App. A at 7.

⁵⁴ Bell Atlantic Comments at 2-3. *See also* Ameritech Comments at 2-4 and Reply at 1-3, USTA Reply at 3.

⁵⁵ PUCO Comments at 4.

⁵⁶ Sprint Reply at 6-7.

⁵⁷ CompTel Comments at 7-8.

⁵⁸ MCI Comments at 3-4 and Reply at 3-4.

⁵⁹ Bell Atlantic Reply at 2.

⁶⁰ NTCA Comments at 3. *See also* NARUC Comments at 4.

⁶¹ AT&T Reply at 8. *See also* Metromedia Reply at 11.

⁶² MCI Reply at 2-3.

⁶³ SWBT Comments at 2-3; NYNEX Comments at 2. *See also* USTA Reply at 3.

⁶⁴ Bell Atlantic Comments at 4-5; Ameritech Comments at 6-8; MPSCS Comments at 8. *See also* AT&T Comments at 6-7; Sprint Reply at 4.

⁶⁵ The NARUC proposal requires that, within 3 business days of the customer's request for a PIC change, the IXC must send each new customer an information package containing at least the following information concerning the requested change:

- a) the name of the customer's current IXC;
- b) the name of the newly requested IXC;
- c) a description of any terms, conditions, or charges that will be incurred;
- d) the name of the person ordering the change;
- e) the name, address, and telephone number of both the customer and the newly requested IXC; and
- f) a postpaid postcard which the customer can use to deny, cancel, or confirm a service order.

on the basis of customers' verbal authorizations. NARUC argues that under its proposal it would be more difficult for IXC's to switch consumers' service without authorization, but that, at the same time, customers could continue to verbally order their long distance carrier.⁶⁶ In addition, GCI notes that the NARUC proposal could be applied to all carriers regardless of size, does not provide a competitive advantage to dominant carriers, and does not create a negative marketing environment for IXC services.⁶⁷

33. Ameritech asserts that the NARUC proposal is inconsistent with the basic philosophy of the proposed rules -- that customers should receive an opportunity to verify their order through some form of positive response, whether through an LOA, electronic verification, or third party verification.⁶⁸ Sprint cautions that if the NARUC proposal is added as a confirmation option, it should only be used in conjunction with outbound telemarketing and should be available to all IXC's regardless of size.⁶⁹ NECA contends that customers might overlook the information package, and that LECs would have no way to verify whether the information was in fact sent.⁷⁰ AT&T speculates that requiring IXC's to hold and "track" PIC change orders pending customer receipt and possible return of cancellation instructions may not be less costly than the written authorization option in the *PIC Change NPRM*.⁷¹

34. SWB agrees that requiring IXC's to send the information package to customers when they request their PICs be changed would reduce customer confusion and the risk of an unauthorized switching of IXC service.⁷² ACTA notes that requiring a newly selected PIC to confirm its selection in writing to the customer has the merit of being simple, effective, and least burdensome, particularly for smaller carriers.⁷³ Sprint comments, however, that much of the information NARUC would require to be sent to the customer is also required by the AT&T-MCI proposal,⁷⁴ and Sprint questions the feasibility as well as the necessity of requiring the newly chosen IXC to inform the customer of the name of its current IXC.⁷⁵

35. MPSCS strongly supports the return postcard and the 14-day waiting period requirements. It also comments that the waiting period could be reduced to a week by customers sending a return postcard to IXC's confirming their acceptances.⁷⁶ Convergent contends that 10 days is an adequate "cooling off" period,⁷⁷ whereas IRA argues that a five-day waiting period is sufficient to allow customers' "second thoughts."⁷⁸ Finally, GTE Service Corporation (on behalf of GTE Hawaiian Telephone Company Incorporated) (GTE Hawaiian) reports that it has been using procedures similar to those suggested by NARUC, with a 10-day waiting period, for all verbal

customer consents, and that customer complaints of unauthorized switching of IXC service have been almost nonexistent.⁷⁹

36. Rep. Wise suggested that the NARUC proposal should be modified so that:⁸⁰

- a) within 2 days of the telephone solicitation, the IXC sends the information package to the customer by first class mail;
- b) the IXC clearly marks both the envelope and the interior letter to notify the customer that action is being taken in regard to changing the customer's long distance carrier;
- c) the information package includes:
 - i) the name, address, and telephone number of a contact point at the Commission for consumer complaints; and
 - ii) any disclosures that the Commission requires be made during an oral solicitation;
 - iii) a statement that the information has been sent in response to a telemarketing call placed to the customer within the previous week;
 - iv) a statement that a responsible decision-maker receiving the telephone call agreed to switch the customer's long distance (Dial-1) service to [name of soliciting IXC];
 - v) direction to the customer to return either (a) a signed authorization card or (b) a form directing the IXC not to submit a long distance service change order to the LEC on behalf of the customer; and
 - vi) a statement that if the customer does not respond within 14 days of the telemarketing call from the IXC, the customer's long distance service will be switched to the soliciting IXC.

Rep. Wise also suggested that:

- a) to ensure customer privacy, the return postcard not include the customer's telephone number; and
- b) to increase the likelihood that the customer will have time to evaluate and respond to the information package, the soliciting IXC be required to wait

⁶⁶ NARUC Comments at 5-6.

⁶⁷ GCI Comments at 3. See also CompTel Comments at 3-4; IRA Reply at 4; Convergent Comments at 5; Convergent Comments at 5.

⁶⁸ Ameritech Reply Comments at 5. See also Allnet Comments at 9; PRTC Comments at 2; SWBT Comments at 3 and Reply at 2-3; Metromedia Reply at 12-13; NECA Comments at 4-5.

⁶⁹ Sprint Reply at 5.

⁷⁰ NECA Comments at 4-5. See also MCI Reply at 2.

⁷¹ AT&T Reply at 5.

⁷² SWBT Comments at 3. See also MPSCS Comments at 3.

⁷³ ACTA Comments at 7.

⁷⁴ Sprint Comments at 11 n. 5.

⁷⁵ Sprint Reply at 5. See also Allnet Comments at 9; Convergent Comments at 7-8.

⁷⁶ MPSCS Comments at 5.

⁷⁷ Convergent Comments at 7-8. See also GCI Reply at 2; ACTA Comments at 7.

⁷⁸ IRA Reply at 4. See also Sprint Comments at 11-12; MCI Reply at 2; NYNEX Comments at 1-2.

⁷⁹ GTE Hawaiian Comments at 4-5.

⁸⁰ Letter from Representative Bob Wise, Chairman, Subcommittee on Government Information, Justice, and Agriculture of the Committee on Government Operations, to Alfred C. Sikes, Chairman, Federal Communications Commission, dated Dec. 24, 1991.

3 weeks after placing the soliciting call before submitting the order to change the customer's long distance carrier.

F. Cost of Implementing the AT&T-MCI Proposal; Burdens on IXC's

37. The record in this proceeding furnishes little detail about the costs of the proposed verification procedures. Metromedia would have the Commission require AT&T and MCI to reveal their full costs before deciding to impose the settlement terms on carriers not a party to the AT&T-MCI dispute. Metromedia notes, however, that although a review of AT&T and MCI's costs may be informative, AT&T and MCI's abilities to sustain the expenses of their settlement arrangement are likely to be greater than those of their competitors.⁸¹ GTE Service Corporation (on behalf of GTE Hawaiian Telephone Company Incorporated)(GTE Hawaiian) contends the implementation costs of the AT&T-MCI proposal will have a disproportionately negative impact on carriers such as GTE which were not on the equal access ballot and, consequently, have a relatively small customer base.⁸² Conversely, NTCA maintains that IXC's conducting telemarketing efforts to attract new customers most often initiate non-subscriber-initiated PIC changes, and that these IXC's should be capable, without undue burden, of establishing one of the three methods for verification.⁸³ NARUC asserts the record does not support that the additional costs imposed by the AT&T-MCI proposal justify the incremental levels of protection. NARUC argues that its proposal, in conjunction with a *significant* penalty for *each* proven incidence of unauthorized switching of IXC service, would be adequate to achieve an appropriate level of protection.⁸⁴

38. Allnet suggests there should be only one procedure for presubscribing customers -- written authorizations with followup verifications -- to assure that all IXC's are equally burdened by the costs of these safeguards.⁸⁵ MPSCS maintains that a signed LOA or follow-up confirmation with a return postcard (as presented in the NARUC proposal) are the fastest, most effective, and least costly means of changing customers' PICs. MPSCS suggests that an IXC that cannot afford postage on such mailings is not viable enough to conduct business.⁸⁶

G. Effect on Small Carriers

39. Metromedia fears the AT&T-MCI proposal would have a chilling effect on the marketing efforts of smaller IXC's who rely on telemarketing to compete with large IXC's.⁸⁷ Convergent suggests that because the AT&T-MCI proposal itself defines the independent third party verifier as capable of performing "large scale" verification processes, such verification should only be required for "large IXC's" such as AT&T and MCI, and, perhaps, Sprint.⁸⁸ In addition, CompTel proposes that the Commission define third-tier carriers as those with less than \$1 billion in annual gross revenues in telecommunications services, which would qualify all IXC's except the largest three as third-tier carriers. CompTel argues that the confirmation procedures in the AT&T-MCI proposal should be modified to allow the NARUC proposal as a fourth confirmation option for third-tier carriers and to exempt such carriers from the confirmation auditing procedures.⁸⁹

40. MPSCS, however, believes there should be one industry standard that applies equally to all companies to ensure that all customers will receive fair and equal treatment.⁹⁰ Sprint also argues that the Commission should adopt standards that apply to all carriers regardless of size, although Sprint cautions that the Commission should take into account the implementation costs such standards would impose on carriers of different sizes.⁹¹ Finally, AT&T contends that the AT&T-MCI proposal would allow each IXC to select or combine those options that minimize costs given that carrier's particular marketing program. AT&T argues that obtaining LOAs from customers before submitting PIC change orders to LECs should be especially inexpensive for smaller carriers, who are already required to have procedures in place to encourage customers to return such cards.⁹²

41. MPSCS notes that the relatively low cost of postage needed for a written LOA or confirmation package should in no way hinder competition.⁹³ Sprint argues that, by modifying the AT&T-MCI proposal to include in-house verification by noncommissioned personnel and auditing frequency based on the volume of outbound telemarketing calls, the AT&T-MCI proposal should not be unduly burdensome for any carrier, regardless of size.⁹⁴ Alternately, Metromedia suggests that the current PIC changes rules apply to IXC's that do not exceed an acceptable level of unauthorized switches, but that repeat offenders should be required to institute more stringent procedures for ensuring that PIC changes are authorized.⁹⁵ Finally, GTE Hawaiian argues that because the *PIC Change NPRM* does not address secondary international PIC carriers, and because there has been no record of abuses by such carriers, the proposed policies and rules should not apply when the carrier is not the

⁸¹ Metromedia Reply at 9 n.7. See also NARUC Comments at 7.

⁸² GTE Hawaiian Comments at 5-7.

⁸³ NTCA Comments at 2.

⁸⁴ NARUC Comments at 6.

⁸⁵ Allnet Comments at 10.

⁸⁶ MPSCS Comments at 7. See also AT&T Reply at 4 n. *.

⁸⁷ Metromedia Reply at 13-15. See also CompTel Comments at 4-6.

⁸⁸ Convergent Comments at 5-6.

⁸⁹ CompTel Comments at 6-7.

⁹⁰ MPSCS Comments at 7. See also NECA Comments at 7.

⁹¹ Sprint Comments at 3. See also SWBT Comments at 2-3.

⁹² AT&T Comments at 5 and Reply at 3-6. See also Ameritech Reply at 4.

⁹³ MPSCS Comments at 8.

⁹⁴ Sprint Comments at 4-6.

⁹⁵ Metromedia Reply at 17-18.

primary IXC selection of the end user.⁹⁶ Allnet objects that such carriers can switch customers' IXCs without authorization just as easily as any other carrier.⁹⁷

V. DISCUSSION

42. In considering the advisability of imposing requirements on carriers of all sizes, we seek to benefit consumers without unreasonably burdening competition in the interexchange market. We therefore require all IXCs who submit PIC change orders to LECs on behalf of customers to institute one of the three confirmation procedures suggested by AT&T and MCI, as presented in Appendix A, Section C, of the *PIC Change NPRM* or, as a fourth alternative, the proposal suggested by NARUC and others, outlined in Appendix B.⁹⁸ We do not believe that expansion of the verification procedures to in-person and mail solicitation, as suggested by Rep. Wise,⁹⁹ is indicated at this time. The NPRM addressed problems that arose from telemarketing sales of long distance service. Furthermore, consumers solicited by mail or in person have not been the focus of public complaints about IXCs' telephone sales practices. In-person solicitation does not lend itself to the misunderstandings that are possible in telemarketing sales, and mail solicitation not only provides information to consumers but requires the consumer to return signed authorization to the soliciting IXC to effect a change in long distance service.

43. We also agree with AT&T that third party verification is preferable to in-house verification. We note that MCI, prior to its settlement agreement with AT&T, used a system of in-house verification that was apparently not without flaws. However, we have balanced the costs of third party verification against the benefits to consumers of a verification procedure which creates evidence totally independent of the IXC's marketing operations, and have concluded that third party verification, rather than in-house verification, should remain as one of the options. The commenting parties have not presented sufficient evidence to enable us to judge the efficacy of on-line verification supplemented by recording. However, in response to Sprint's concern about the costs of third party verification, we note that the fourth option, i.e., an information package and a 14-day waiting period, is even less expensive than in-house verification.

44. We conclude that the record in this proceeding demonstrates that IXCs of all sizes should take the necessary steps to verify their telemarketing sales.¹⁰⁰ We have considered the arguments raised by the parties regarding the burden of implementing improved verification procedures and have weighed those costs against the need to protect consumers against unwanted changes in their long distance service. The record indicates that each of the three procedures proposed by AT&T and MCI presents certain disadvantages: carriers have had little success in having customers return the LOA, and it tends to discourage competition; there is little additional support for elec-

tronic verification via an 800 number, and the cost of such a program is unknown; the cost of third party verification is unclear, may lay undue burdens on small carriers, and its efficacy in reducing unauthorized switches remains to be proven. Moreover, both third party verification and electronic verification may take many months to implement.

45. Despite these potential limitations, we believe that these verification options will significantly benefit customers without imposing undue costs on carriers. We have not, however, adopted Rep. Wise's suggestion that there should be a 24-hour waiting period between the sale and the verification of the order.¹⁰¹ Such a delay would appear to diminish the reliability of verification by making it less likely that the verifier contacted the party who had spoken with the telemarketer. Given our special concern about potential costs imposed on smaller IXCs in particular, we also conclude that the NARUC proposal is a reasonable alternative for other IXCs should they decide not to follow one of the procedures agreed to by AT&T and MCI. The NARUC procedures would place no undue burdens on small carriers inasmuch as they are now required to take steps to obtain an LOA. Moreover, in contrast to the AT&T-MCI verification proposals, the NARUC procedures can be implemented quickly by all carriers.

46. We conclude that IXCs who choose to follow the NARUC procedures should be required to mail the information package to the customer within 3 business days of the customer's request for a change in long distance carrier. Requiring IXCs to mail the package within 2 days, as suggested by Rep. Wise,¹⁰² would appear to provide carriers insufficient time to process customer information and send the package. Such a requirement would be particularly burdensome for smaller carriers. We agree with Rep. Wise that the information package and letter should be sent by first class mail and should be clearly marked to indicate that they concern changing the customer's long distance carrier.¹⁰³

47. While we do not adopt Rep. Wise's suggestion¹⁰⁴ that IXCs following the NARUC verification procedures be required to wait 21 days before placing the customer's change order with the LEC, we believe the procedures set forth in Appendix B meet his concerns that consumers be afforded sufficient time to consider the material mailed to them. The majority of commenters were concerned that a 14-day waiting period is anticompetitive. Moreover, because the NARUC procedures allow carriers at least 3 business days to send the information package to the customer and carriers must wait 14 days after sending the information package before submitting the customer's PIC change order to the LEC, at least 17 days would elapse between the solicitation call from the carrier and submission of the customer's order with the LEC. We believe that the 14-day waiting period protects customers against unauthorized switching while, at the same time, providing an alternative confirmation procedure that may be more

⁹⁶ GTE Hawaiian Comments at 3-4.

⁹⁷ Allnet Reply at 3 n. 6.

⁹⁸ A description of the four confirmation procedures is attached at Appendix B of this Order.

⁹⁹ See Rep. Wise comments at 2.

¹⁰⁰ We have also concluded that secondary international PIC carriers such as GTE Hawaiian should take the same steps to

verify their telemarketing sales. Such steps are not unduly burdensome, and GTE Hawaiian has indicated that it has no objection to implementing the NARUC procedures.

¹⁰¹ See Rep. Wise Comments at 2.

¹⁰² See Para. 39, *supra*.

¹⁰³ See Para. 39, *supra*.

¹⁰⁴ See Para. 39, *supra*.

affordable for smaller carriers than the AT&T-MCI proposed procedures. The 14-day waiting period is designed to allow time for the customer to receive the information package, to review it with members of the household, and to mail back the postcard confirming or denying the order.¹⁰⁵ In addition, neither consumers nor carriers are disadvantaged by the 14-day wait. Customers who wish to place calls with their new carrier before the required 14-day waiting period has ended may do so by contacting the LEC directly or by using one of the other confirmation methods the IXC may make available. In addition, the customer may in the interim reach its new carrier by dialing the IXC's 10XXX access code. Use of the IXC's access code offers convenience to customers during the waiting period and would protect small carriers from loss of revenues during the waiting period.

48. Adoption of the revised verification procedures is consistent with the Commission's previous decisions in the *Waiver Order*, in which we allowed IXCs to place PIC orders if they had instituted steps to obtain LOAs, and the *Illinois CUB Order*, in which we concluded that the rules were intended to facilitate the IXCs' marketing efforts while maintaining the protection embodied in the requirement for LOAs.¹⁰⁶ We agree with Sprint and Bell Atlantic that the current rules regarding IXC responsibility for charges associated with disputed changes for which the IXC cannot produce an LOA should remain unchanged. We anticipate that the revised verification procedures will sharply reduce disputes about orders for the IXCs' service and that the charges imposed by LEC tariffs, therefore, will not impose too heavy a burden on the IXCs.

49. Although we sought comment in the *PIC Change NPRM* on whether the procedures set forth in the AT&T-MCI proposal, or alternative procedures, should apply to customer-owned payphones, few parties addressed this issue. Although there has been some suggestion that we require different verification procedures for customer-owned payphones, the record before us does not support such disparate treatment. Therefore, we will, at this time, require IXCs to institute one of the four verification procedures for customer-owned payphone service. Similarly, since the record "does not support disparate treatment for business and residential service, we will require IXCs to institute an allowed verification procedure for both business and residence service solicitations.

50. We will not interfere with the agreements reached by AT&T and MCI to resolve their civil suits. We do not, however, adopt certain procedures which AT&T and MCI jointly agreed would apply to each other, namely the monthly auditing requirements or the Quality Assurance Program, for other carriers. See Appendix A of the *PIC*

Change NPRM. Both of these programs would appear to require extensive involvement by this Commission in the business operations of these other IXCs, and we are reluctant, at this time, to take this action without a record suggesting such steps are necessary to protect consumers. Furthermore, there is little support among commenting parties for mandatory monthly audits or the Quality Assurance Program. Concerns were raised about costs to smaller carriers and about the efficacy of "self-attestation" reporting. We do, however, suggest that IXCs may benefit from instituting such programs on their own behalf.

VI. CONCLUSION

51. In this *Report and Order*, we have found that a modification of the carrier selection procedures is necessary to protect the interests of consumers. We have also found that the verification procedures proposed by AT&T and MCI in their settlement agreement, as well the alternative procedures for other carriers suggested by NARUC, will be more effective and less burdensome than the amendment to the carrier selection rules originally requested by AT&T in its petition for rulemaking. We have also found that the auditing program and Quality Assurance Program agreed to by AT&T and MCI should not now be imposed on other carriers. In light of these conclusions, we modify our long distance carrier selection procedures to reflect the three confirmation procedures suggested by AT&T and MCI, as presented in Appendix A, Section C, of the *PIC Change NPRM*, and the confirmation procedure suggested by NARUC, as presented in Paragraph 23 of the *PIC Change NPRM*.¹⁰⁷

VII. REGULATORY FLEXIBILITY ACT

52. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

A. Need and purpose of this action:

The Commission is adopting this *Report and Order* to protect consumers against unauthorized switching of their long distance company. The Order requires carriers who generate customer orders by telemarketing to verify the customer's authorization by one of four procedures before placing the order with the LEC on the customer's behalf.

B. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility analysis:

We asserted in the *PIC Change NPRM* that the proposed rules impose no reporting requirements and no new recordkeeping requirements. Nevertheless, Allnet argues that the proposed rules require additional recordkeeping (records must be kept for 12 months) and

¹⁰⁵ We adopt Rep. Wise's suggestion that the name, address, and telephone number of a contact point at the Commission for consumer complaints be included in the information package. However, we do not adopt his suggestion that the customer's telephone number not be included on the return postcard because the customer's telephone number is necessary identification for the IXC to accurately place or cancel the solicited PIC change order. As to his suggestion that the information package also include any disclosures that the Commission requires be made during the oral solicitation, the Commission has not prescribed language to be used by IXCs in telemarketing sales.

¹⁰⁶ As Ameritech commented, consumers are unfamiliar with terms such as "Letter of Agency" and may not understand the nature of the document they are signing. Therefore, we recommend that carriers title their LOA forms in clear and simple language, such as "Permission to Change Long Distance Carrier" or "Long Distance Carrier Selection." See Ameritech Comments at 6-8.

¹⁰⁷ A description of the four confirmation procedures is attached as Appendix B of this Order.

reporting (certification to LECs of compliance, attestation audits, etc.) requirements that do not exist under the current rules.¹⁰⁸ We reply that IXC's are currently required to institute steps to obtain and retain LOAs for 12 months. Moreover, this Order does not require other IXC's to adopt the compliance certification, auditing requirements, or Quality Assurance Program suggested in the AT&T-MCI proposal.

III. Significant alternatives considered and rejected:

Sprint proposes allowing IXC's to verify PIC change orders by in-house verification. We conclude that independent third party verification, which provides a system which creates evidence totally independent of the IXC's marketing operations, is preferable to in-house verification. Because this Order adopts the NARUC proposal, which is even less expensive than inhouse verification, as a fourth option, the Order should not have a significant economic impact on a substantial number of small business entities.

VIII. PAPERWORK REDUCTION ACT STATEMENT

53. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements and will not increase burden hours imposed on the public.

IX. ORDERING CLAUSES

54. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 4(i) and 201-204 of the Communications Act, 47 U.S.C. §§ 4(i) and 201-204, all interexchange carriers shall put into effect the modifications described herein.

55. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau is delegated authority to act upon matters pertaining to implementation of the policies, rules, and requirements set forth herein.

56. IT IS FURTHER ORDERED that the petition for rulemaking filed by American Telephone and Telegraph Company, IS GRANTED TO THE EXTENT DESCRIBED HEREIN, and otherwise IS DENIED.

57. IT IS FURTHER ORDERED that the provisions in this *Report and Order* will be effective sixty (60) days after *Federal Register* publication.

58. IT IS FURTHER ORDERED that, effective 60 days after publication in the *Federal Register*, the Commission's Rules are amended to add Subpart K, consisting of Section 64.1100, to Part 64, 47 C.F.R. Part 64, as shown in Appendix B hereto.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

COMMENTS:

1. Allnet Communication Services, Inc. (Allnet)
2. American Telephone and Telegraph Company (AT&T)
3. America's Carriers Telecommunications Association (ACTA)
4. Ameritech Operating Companies (Ameritech)
5. Bell Atlantic (Bell Atlantic)
6. Communique Telecommunications, Inc. (CTI)
7. Competitive Telecommunications Association (CompTel)
8. Convergent Communications, Inc. (Convergent)
9. Eastern Telephone Systems, Inc. d/b/a Eastern Tel Long Distance Service, Inc. (Eastern)
10. General Communication, Inc. (GCI)
11. GTE Service Corporation (on behalf of GTE Hawaiian Telephone Company Incorporated)(GTE Hawaiian)
12. Interexchange Resellers Association (IRA)
13. MCI Telecommunications Corporation (MCI)
14. Michigan Public Service Commission Staff (MPSCS)
15. National Association of Regulatory Utility Commissioners (NARUC)
16. National Exchange Carrier Association (NECA)
17. National Telephone Cooperative Association (NTCA)
18. New York State Department of Public Service (NYSDPS)
19. New York Telephone Company and New England Telephone and Telegraph Company (collectively the NTCs) (NYNEX)
20. Public Utilities Commission of Ohio (PUCO)
21. Puerto Rico Telephone Company (PRTC)
22. Southwestern Bell Telephone Company (SWB)
23. Telecommunications Marketing Association (TMA)
24. United States Telephone Association (USTA)
25. US Sprint (Sprint)
26. Wise, Representative Bob. West Virginia (Rep. Wise)

¹⁰⁸ Allnet Comments at 10.

REPLY COMMENTS:

1. Allnet
2. AT&T
3. Ameritech
4. Bell Atlantic
5. BellSouth
6. Cincinnati Bell Telephone Company (CBT)
7. GCI
8. IRA
9. Metromedia Communications Corporation (Metromedia)
10. MCI
11. SWB
12. TMA
13. USTA
14. Sprint

APPENDIX B**Amendment to the Commission's Rules**

47 C.F.R. Part 64, is amended to read as follows:

1. The authority citation for Part 64 is amended to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201-4, 218, 48 Stat. 1070-71, as amended, 1077; 47 U.S.C. 201-4, 218, unless otherwise noted.

2. Part 64 is amended by adding Subpart K, to read as follows:

Subpart K -- Changing Long Distance Service**§64.1100 Verification of orders for long distance service generated by telemarketing.**

No IXC shall submit to a LEC a primary interexchange carrier (PIC) change order generated by telemarketing unless and until the order has first been confirmed in accordance with the following procedures:

a) the IXC has obtained the customer's written authorization to submit the order that explains what occurs when a PIC is changed and confirms:

- 1) the customer's billing name and address and each telephone number to be covered by the PIC change order,
- 2) the decision to change the PIC to the IXC, and
- 3) the customer's understanding of the PIC change fee; or

b) the IXC has obtained the customer's electronic authorization, placed from the telephone numbers(s) on which the PIC is to be changed, to sub-

mit the order that confirms the information described in subsection (1) above to confirm the authorization. IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

c) an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or

d) within three business days of the customer's request for a PIC change, the IXC must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

1) the information is being sent to confirm a telemarketing order placed by the customer within the previous week.

2) the name of the customer's current IXC.

3) the name of the newly requested IXC.

4) a description of any terms, conditions, or charges that will be incurred.

5) the name of the person ordering the change,

6) the name, address, and telephone number of both the customer and the soliciting IXC,

7) a postpaid postcard which the customer can use to deny, cancel, or confirm a service order,

8) a clear statement that if the customer does not return the postcard the customer's long distance service will be switched within 14 days after the date the information package was mailed to [name of soliciting carrier], and

9) the name, address, and telephone number of a contact point at the Commission for consumer complaints.

10) IXCs must wait 14 days after the form is mailed to customers before submitting their PIC change orders to LECs. If customers have cancelled their orders during the waiting period, IXCs, of course, cannot submit the customers' orders to the LECs.

**SEPARATE STATEMENT OF
COMMISSIONER ANDREW C. BARRETT**

Re: Policies and Rules Concerning Changing Long Distance Carriers (CC Docket No. 91-64)

I am pleased to support this Order which provides stronger verification procedures designed to protect customers from unscrupulous telemarketing practices. I am

convinced that modifications to our current carrier selection procedures is necessary to protect the interest of consumers. I am hopeful that the verification procedures outlined by AT&T, MCI, and NARUC will be a more effective way of providing these needed safeguards. I am particularly satisfied that the NARUC proposal has been included as an alternative verification method. This method has the added advantage of providing smaller carriers with an alternative that is simpler and less costly to implement.

This item is a good example of where private parties reach a solution to their problems and bring that solution to the Commission. Such cooperative actions should become a model for other disputes among parties. I believe this Order did a good job in balancing legitimate customer concerns against the objective of allowing greater and easier customer choices of long distance providers. I believe that these revisions to our current procedures will provide additional protection to consumers beyond existing safeguards without unreasonably burdening competition in the interexchange market. I plan to closely monitor this area to assure myself that the verification procedures implemented today adequately protect customer interests on a going forward basis.